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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KELVIN CHONG, SRINIVAS MANDYAM, KRISHNA
VEDATI, VIKRANTH KATPALLY REDDY, WINSTON WANG, and
CYNTHIA KUO

Appeal 2009-005029
Application 10/054,623
Technology Center 2100

Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and THU A.
DANG, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

STATEMENT OF THE CASE

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

The Patent Examiner rejected claims 1-4, 6-14, 16-22, 25, and 26. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The Appellants describe the invention at issue on appeal as "a system and method that enables the rapid development of scalable, multi-channel workflow-based applications" (Spec. 1.) They define the terms "channel" and "multi-channel application" as follows.

2. A *channel* refers to the medium, or the "pipe" over which the interaction takes place. The main channels of access are: wireline access over the Internet using physical connection cables or telephone cables; wireless access over cellular and other over-the-air networks such as satellite links, radio frequency waves, or infrared connections; and voice access over analog PSTN [i.e., public switched telephone network] networks. . . .

. . . .

4. A *multi-channel application* is an application that can be accessed via two or more channels

(*Id.* at 2.)

ILLUSTRATIVE CLAIM

7. A computer system for visually building multi-channel applications, comprising:

a graphical user interface (GUI) comprising a user interface selection device and a display for displaying an interactive development environment for visually designing workflow describing a multi-channel application capable of operating over a plurality of channels,

said environment being adapted to allow a developer to independently design said workflow in a plurality of layers, wherein each layer includes states and transitions common to at least one channel of said multi-channel application.

REJECTIONS

Claims 1-4, 6-12, 19-22, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,630,069 ("Flores") and U.S. Patent Application Publication No. 2002/0138617 A1 ("Christfort").

Claims 13-14 and 16-18 stand rejected under § 103(a) as unpatentable over Flores; Christfort; and U.S. Patent No. 6,393,456 B1 ("Ambler").

ISSUE

The Examiner admits that "Flores does not explicitly teach a multi-channel application capable of operating over a plurality of channels, comprising a plurality of layers, . . . wherein each layer includes states or transitions common to at least one channel of said multi-channel application" (Ans. 4.) She makes the following findings.

Christfort teaches a multi-channel application capable of operating over a plurality of channels, comprising a plurality of layers, wherein each of said layers corresponds to at least one channel of said multi-channel application, wherein each layer includes states or transitions common to at least one channel of said multi-channel application ("... FIG. 1A also illustrates end users 130, 132, 134 that are connected to host server 110 by connections 140, 142, 144 There are a number of different types of end users and connections. For example, end user 130 may be a desktop computer that is connected to host server 110 through a variety of ways, such as via the Internet, a DSL [i.e., digital subscriber line] connection, or an ISDN [i.e., integrated services digital network]. Also, end user 132 may be a PDA [i.e., personal digital assistant] that is connected to host

server 110 via a cellular modem connection. Further, end user 134 may be a mobile phone that is connected to the Internet and thereby to host server 110 via a WAP-to-HTTP [i.e., Wireless Application Protocol to Wireless Application Protocol] gateway" e.g. see in par. 66 and 95; The multi-channel application communicates with various devices using plurality of channels of communication.) . . .

(*Id.* at 4-5.) The Examiner then makes the following conclusion and findings.

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the system disclosed by Flores to include a multi-channel application capable of operating over a plurality of channels, comprising a plurality of layers, wherein each of said layers corresponds to at least one channel of said multi-channel application, wherein each layer includes states or transitions common to at least one channel of said multi-channel application; and a third module adapted to allow a developer to integrate data sources within said multi-channel application using the teaching of Christfort. The modification would be obvious because one of ordinary skill in the art would be motivated to provide improved techniques for designing applications that more effectively work with all devices (Christfort, par. 21, lines 1-3).

(*Id.* at 5-6.) The Appellants argue that "the Examiner has impermissibly used hindsight in an attempt to reconstruct [the] claim[s] . . . using isolated teachings of Flores and Christfort. (App. Br. 11.) They further argue "that the cited references fail to teach or suggest, for example, that the workflow comprises 'a plurality of layers, . . . wherein each layer includes states and transitions common to at least one channel of said multi-channel application[' . . .'" (*Id.* at 14.)

Therefore, the issue before us is whether the Examiner erred in combining teachings from Flores and Christfort and in finding that such a combination would have suggested a multi-channel application capable of operating over a plurality of channels, comprising a plurality of layers, wherein each layer includes states or transitions common to at least one channel of said multi-channel application.

FINDINGS OF FACT

Flores explains that "[a]n important part of a workflow analyst's work is the development of business process maps, with which the analyst and his/her client can readily see and interpret the structure of a business process, and identify quickly areas for clarification or improvement." (Col. 1, ll. 59-63.) Consequently, the reference discloses "a set of graphical tools that can be used by a developer or business analyst to map out business processes." (Abs., ll. 7-9.)

"A method and apparatus for providing a network based operating system for mobile clients is disclosed" (Abs., ll. 1-2) by Christfort. "Services may be developed that can be used to support different client devices with different capabilities. The services provide output with multiple variations based on different devices, and an intermediary selects the variation best suited for the requesting device." (*Id.* at ll. 2-7.)

ANALYSIS

"Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." *Para-Ordnance Mfg. v. SGS Importers Int'l*, 73 F.3d 1085, 1087 (Fed. Cir. 1995) (citing *W.L. Gore &*

Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, (Fed. Cir. 1983)). "[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); *In re Rouffet*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998)). "To facilitate review, this analysis should be made explicit." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 401 (2007).

Here, Christfort provides a network based operating system that features services that can be used to support different mobile clients. The Examiner emphasizes that the same reference teaches that "it is desirable to provide improved techniques for designing applications that more effectively work with all devices." (§ 0021.)

While we agree that such techniques are desirable for a network based operating system that features services that can be used to support different mobile clients, Flores is not concerned with a network based operating system or services that can be used to support different mobile clients. Instead, Flores merely maps out business processes. Consequently, the Examiner has not persuaded us that applications that work with all mobile client devices would have benefited Flores' mapping tools and, thus, would have motivated one of ordinary skill in the art to combine teachings from Flores and Christfort.

"A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 783 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)). Here, assuming *arguendo* that there was a reason to combine

teachings from the two references, the teaching of Christfort that the Examiner proposes to combine follows in pertinent part.

FIG. 1A also illustrates end users 130, 132, 134 that are connected to host server 110 by connections 140, 142, 144. . . . There are a number of different types of end users and connections. For example, end user 130 may be a desktop computer that is connected to host server 110 through a variety of ways, such as via the Internet, a DSL connection, or an ISDN.

(¶ 0066.) We are unpersuaded that this part of the latter reference discloses the claimed "layers," "not to mention . . . that 'each layer includes states and transitions common to at least one channel' of said multi-channel application[]"" (Appeal Br. 13.)

The Examiner does not allege, let alone show, that the addition of Ambler cures the aforementioned deficiencies of Flores and Christfort. Based on the aforementioned facts and analysis, we *conclude* that the Examiner erred in combining teachings from Flores and Christfort and in finding that such a combination would have suggested a multi-channel application capable of operating over a plurality of channels, comprising a plurality of layers, wherein each layer includes states or transitions common to at least one channel of said multi-channel application.

DECISION

We reverse the rejections of claims 1-4, 6-14, 16-22, 25, and 26.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

REVERSED

Appeal 2009-005029
Application 10/054,623

Erc

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